

**HUMAN SERVICES DEPARTMENT[441]**

**Adopted and Filed**

**Rule making related to decrease in minimum occupancy limitation  
used for reimbursement calculation**

The Human Services Department hereby amends Chapter 81, “Nursing Facilities,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code section 249A.4.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 249A.4 and 2021 Iowa Acts, House File 891, division VII, section 39.

*Purpose and Summary*

The current rule requires that patient days in nursing facilities for purposes of the calculation of per diem for administrative, environmental, and property expenses shall be the greater of actual patient days or 85 percent of the licensed capacity of the facility. In accordance with 2021 Iowa Acts, House File 891, division VII, section 39, these amendments decrease the minimum occupancy limitation to 70 percent because of concerns that providers will continue to experience a decrease in nursing facility occupancy due to the public health emergency. The cost reports for 2022 fiscal year ending (FYE) will be used in the rebase for state fiscal year (SFY) 2024 rates.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on December 15, 2021, as **ARC 6097C**. No public comments were received. No changes from the Notice have been made.

*Adoption of Rule Making*

This rule making was adopted by the Council on Human Services on February 10, 2022.

*Fiscal Impact*

These amendments are for SFY 2024 and SFY 2025, and the cost report data are not yet available. Therefore, the fiscal impact cannot be determined. There will be no impact in SFY 2022 or SFY 2023.

*Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 441—1.8(17A,217).

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or

group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

*Effective Date*

This rule making will become effective on May 1, 2022.

The following rule-making actions are adopted:

ITEM 1. Amend subparagraph **81.6(16)“a”(1)** as follows:

(1) Non-state-owned nursing facilities. Effective December 1, 2009, patient days for purposes of the computation of administrative, environmental, and property expenses for non-state-owned facilities shall be inpatient days as determined in subrule 81.6(7) or 85 percent of the licensed capacity of the facility, whichever is greater. For the reimbursement period beginning July 1, 2023, and ending June 30, 2025, patient days for purposes of the computation of administrative, environmental, and property expenses for non-state-owned facilities shall be inpatient days as determined in subrule 81.6(7) or 70 percent of the licensed capacity of the facility, whichever is greater. Patient days for purposes of the computation of all other expenses shall be inpatient days as determined in subrule 81.6(7).

ITEM 2. Amend numbered paragraph **81.6(16)“h”(9)“1”** as follows:

1. Effective December 1, 2009, total patient days shall be determined using the most current submitted financial and statistical report or using the estimated total patient days as reported in the request for the add-on. For purposes of calculating the add-on, total patient days shall be the greater of the estimated annual total patient days or 85 percent of the facility's estimated licensed capacity. For the period beginning July 1, 2023, and ending June 30, 2025, patient days for purposes of the computation of administrative, environmental, and property expenses for non-state-owned facilities shall be inpatient days or the minimum occupancy of 70 percent of the licensed capacity of the facility, whichever is greater.

ITEM 3. Amend numbered paragraph **81.6(16)“h”(12)“1”** as follows:

1. Effective December 1, 2009, for purposes of recalculating the capital cost per diem instant relief add-on, total patient days shall be based on the greater of the number of actual patient days during the period in which the add-on was paid or 85 percent of the facility's actual licensed bed capacity during the period in which the add-on was paid. For the period beginning July 1, 2023, and ending June 30, 2025, patient days for purposes of the computation of administrative, environmental, and property expenses for non-state-owned facilities shall be inpatient days or the minimum occupancy of 70 percent of the licensed capacity of the facility, whichever is greater.

ITEM 4. Amend rule **441—81.6(249A)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections 249A.4 and 249A.16, ~~Iowa Code chapter and chapters 249K, and 2009 Iowa Code Supplement chapter 249L.~~

ITEM 5. Amend rule **441—81.23(249A)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code ~~Supplement~~ section 249A.30A.

[Filed 2/13/22, effective 5/1/22]

[Published 3/9/22]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/9/22.